AMENDED IN ASSEMBLY JANUARY 9, 2006

AMENDED IN ASSEMBLY MAY 27, 2005

AMENDED IN ASSEMBLY MARCH 31, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL No. 1101

Introduced by Assembly Member Oropeza

February 22, 2005

An act to amend Sections 44320, 44322, ~~44323,~~ 44342, 44360, 44390, and 44391 of, and to add Sections 44303.5, 44323.5, 44395, and 44396 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1101, as amended, Oropeza. Air pollution: diesel magnet sources.

(1) Existing law imposes various limitations on emissions of air contaminants for the control of air pollution from vehicular and nonvehicular sources. Existing law generally designates the State Air Resources Board as the state agency with the primary responsibility for the control of vehicular air pollution, and air pollution control districts and air quality management districts with the primary responsibility for the control of air pollution from all sources other than vehicular sources, including stationary sources. The Air Toxics "Hot Spots" Information and Assessment Act of 1987 requires the state board to compile a list of substances that present a chronic or acute threat to public health when present in the ambient air, subjects certain facilities to the act, according to a schedule, and requires the operator of a subject facility to prepare and submit to an air district a proposed comprehensive emissions inventory plan, for approval by

the district. The act requires an air district to prepare an industrywide emissions inventory for certain facilities. The act, under certain circumstances, requires a facility operator to conduct a facility toxic air contaminant risk reduction audit and to develop an emissions reduction plan.

This bill would make a facility that is a diesel magnet source, as defined, subject to the act. The bill would require the state board, on or before July 1, 2007, in consultation with the air districts, to prepare and make available to the public a list of diesel magnet sources, as prescribed. ~~The bill would include diesel magnet sources in that industrywide emissions inventory requirement.~~ The bill would require any facility for which a district is preparing an industrywide emissions inventory or health risk assessment to provide to the district, within 60 days of the date of the request, all information as may be specified by the district as necessary for the preparation of the inventory or assessment.

The bill would provide for an extended period for a diesel magnet source to comply with the risk reduction audit and plan requirements. By expanding the types of facilities subject to the act, the bill would impose new duties on air districts, thereby imposing a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) The people of California have a right to know when industrial or commercial operations result in emission of toxic air contaminants that may pose a significant health risk to the people exposed to those emissions.

(2) Existing law requires facilities whose operations result in emission of toxic air contaminants to prepare inventories of those

emissions and submit them to the local air districts for prioritization.

(3) Existing law also requires facilities that are designated high-priority to prepare health risk assessments, and if the assessment shows the potential health risks to be significant, to notify the public of those risks.

(4) Existing law further requires facilities that pose unacceptably high risks to public health to prepare plans to reduce those risks, and to implement the plans according to a specified schedule.

(5) Traditional stationary sources, both large and small, have already complied with these requirements by preparing inventories of their emissions, and where applicable, preparing health risk assessments, notifying the public, and implementing risk reduction.

(6) Recent studies show that particulate emissions in diesel exhaust are highly toxic, and account for upwards of 70 percent of the statewide cancer risk due to toxic pollutants in ambient air.

(7) Industrial and commercial operations that involve or attract high levels of diesel traffic or other diesel engine use can pose substantially higher risks to the public near the facilities.

(8) Available data indicate that these diesel magnet sources may pose risks to the surrounding communities that are far greater than risks posed by most traditional stationary sources, and that far greater numbers of people are affected by the emissions. These diesel magnet sources meet the statutory definition of “facility” under existing law, but to date have not submitted inventories or taken other actions in compliance with existing statutes.

(9) Large diesel magnet sources should comply with requirements to prepare and submit inventories of their emissions, prepare health risks assessments, notify the public of significant risks, and reduce unacceptably high risks.

(10) Local air pollution control districts and air quality management districts should review policies and procedures that implement existing law and, if necessary, revise them to appropriately address large diesel magnet sources. Review of existing policies and procedures, and the preparation of inventories, health risk assessments, public notification, and risk

reduction should be carried out under a coordinated process and schedule.

(b) It is the intent of the Legislature to define diesel magnet sources to include ports, airports, railyards, ~~distribution centers,~~ and intermodal sites, and to establish the timeframe for districts to review and, if necessary, revise policies and procedures, and for the largest diesel magnet sources to comply with these requirements.

SEC. 2. Section 44303.5 is added to the Health and Safety Code, to read:

44303.5. "Diesel magnet source" means a facility that, by the nature of its operation, attracts diesel engines in large numbers, and includes all of the following:

(a) Ports.

(b) Airports.

(c) Railyards.

~~(d) Centers for distribution of products or materials. For the purposes of this part, a center for distribution of products or materials may include a single distribution operation or an aggregation of those operations in the same general location, where there may be cumulative impacts of that aggregation.~~

SEC. 3. Section 44320 of the Health and Safety Code is amended to read:

44320. This part applies to all of the following:

(a) Any facility that manufactures, formulates, uses, or releases any of the substances listed pursuant to Section 44321 or any other substance that reacts to form a substance listed in Section 44321 and that releases or has the potential to release total organic gases, particulates, or oxides of nitrogen or sulfur in the amounts specified in Section 44322.

(b) Except as provided in Section 44323, any facility that is listed in any current toxics use or toxics air ~~emission~~ *emissions* survey, inventory, or report released or compiled by a district. A district may, with the concurrence of the state board, waive the application of this part pursuant to this subdivision for any facility that the district determines will not release any substance listed pursuant to Section 44321 due to a shutdown or a process change.

(c) Any facility that is a diesel magnet source, as defined in Section 44303.5, with the greatest potential impact on public

health determined on a statewide basis, as listed by the state board under subdvision (e) of Section 44322.

SEC. 4. Section 44322 of the Health and Safety Code is amended to read:

44322. This part applies to facilities specified in subdivision (a) of Section 44320 in accordance with the following schedule:

(a) For those facilities that release, or have the potential to release, 25 tons per year or greater of total organic gases, particulates, or oxides of nitrogen or sulfur, this part becomes effective on July 1, 1988.

(b) For those facilities that release, or have the potential to release, more than 10 but less than 25 tons per year of total organic gases, particulates, or oxides of nitrogen or sulfur, this part becomes effective July 1, 1989.

(c) For those facilities that release, or have the potential to release, less than 10 tons per year of total organic gases, particulates, or oxides of nitrogen or sulfur, the state board shall, on or before July 1, 1990, prepare and submit a report to the Legislature identifying the classes of those facilities to be included in this part and specifying a timetable for their inclusion.

(d) On and after January 1, 2006, facilities that are subject to this part but have not submitted inventories as required under Chapter 3 (commencing with Section 44340) shall have one year from the date of inclusion on a list of subject facilities, established pursuant to this part, to prepare and submit to the district an emissions inventory plan. Except for any calendar date deadline before January 1, 2006, all schedules for action set forth in Chapter 3 (commencing with Section 44340), Chapter 4 (commencing with Section 44360), or Chapter 6 (commencing with Section 44390) shall apply.

(e) On or before July 1, 2007, the state board shall, in consultation with the districts, prepare and make available to the public a list of diesel magnet sources subject to this part, as follows:

(1) The list of subject facilities shall include all of the following:

(A) Five ports.

(B) Ten airports.

(C) Twenty-five railyards.

~~(D) Ten centers for the distribution of products or materials, to be listed upon completion of the industrywide risk assessment pursuant to Section 44323, and, based upon the results of that assessment, the state board may identify an aggregation of distribution operations within the same general area as a single facility for the purposes of compliance with this part, where there may be cumulative impacts associated with that aggregation.~~

(2) In listing these facilities, the state board shall use the following criteria, unless clear and compelling data ~~is readily available and demonstrates~~ *are readily available and demonstrate* that other criteria and ranking should be used, to include on the list the facilities likely to pose the greatest potential risk to public health:

(A) A port that moves at least 1,500,000, metric tons per year of cargo, inbound and outbound, combined.

(B) An airport through which at least 2,000,000, passengers travel per year.

(C) Any railyard site that locomotive engines operate at least 10,000 hours per year, including movement and idling.

~~(D) The ten distribution centers shown to pose the greatest potential risk to public health, based on the industrywide risk assessment performed under Section 44323.~~

~~SEC. 5. Section 44323 of the Health and Safety Code is amended to read:~~

~~44323. A district may prepare an industrywide emissions inventory and health risk assessment for facilities specified in subdivision (b) of Section 44320 and subdivisions (a) and (b) of Section 44322, and shall prepare an industrywide emissions inventory for the facilities specified in subdivision (c) and (e) of Section 44322, in compliance with this part for any class of facilities that the district finds and determines meets all of the following conditions:~~

~~(a) All facilities in the class fall within one four-digit Standard Industrial Classification Code.~~

~~(b) Individual compliance with this part would impose severe economic hardships on the majority of the facilities within the class.~~

~~(c) The majority of the class is composed of small businesses, except in the case of distribution operations that are diesel magnet sources.~~

~~(d) Releases from individual facilities in the class can easily and generically be characterized and calculated.~~

~~SEC. 6.~~

SEC. 5. Section 44323.5 is added to the Health and Safety Code, to read:

44323.5. Any facility for which a district is preparing an industrywide emissions inventory or health risk assessment shall provide to the district, within 60 days of the date of the request, all information as may be specified by the district as necessary for the preparation of the inventory or assessment.

~~SEC. 7.~~

SEC. 6. Section 44342 of the Health and Safety Code is amended to read:

44342. (a) The state board shall, on or before May 1, 1989, in consultation with the districts, develop criteria and guidelines for site-specific air toxics emissions inventory plans which shall be designed to comply with the conditions specified in Section 44340 and which shall include at least all of the following:

(1) For each class of facility, a designation of the hazardous materials for which emissions are to be quantified and an identification of the likely source types within that class of facility. The hazardous materials for quantification shall be chosen from among, and may include all or part of, the list specified in Section 44321.

(2) Requirements for a facility diagram identifying each actual or potential discrete ~~emission~~ *emissions* point and the general locations where fugitive emissions may occur. The facility diagram shall include any nonpermitted and nonprocess sources of emissions, and shall provide the necessary data to identify emissions characteristics. An existing facility diagram that meets the requirements of this section may be submitted.

(3) Requirements for source testing and measurement. The guidelines may specify appropriate uses of estimation techniques, including, but not limited to, emissions factors, modeling, mass balance analysis, and projections, except that source testing shall be required wherever necessary to verify emissions estimates to the extent technologically feasible. The guidelines shall specify conditions and locations where source testing, fence line monitoring, or other measurement techniques are to be required and the frequency of that testing and measurement.

(4) Appropriate testing methods, equipment, and procedures, including quality assurance criteria.

(5) Specifications for acceptable emissions factors, including, but not limited to, those which are acceptable for substantially similar facilities or equipment, and specification of procedures for other estimation techniques and for the appropriate use of available data.

(6) Specification of the reporting period required for each hazardous material for which emissions will be inventoried.

(7) Specifications for the collection of useful data to identify toxic air contaminants pursuant to Article 2 (commencing with Section 39660) of Chapter 3.5 of Part 2.

(8) Standardized format for preparation of reports and presentation of data.

(9) A program to coordinate and eliminate any possible overlap between the requirements of this chapter and the requirements of Section 313 of the Superfund Amendment and Reauthorization Act of 1986 (Public Law 99-499).

(10) On and after January 1, ~~2006~~ *2007*, any specific criteria for the preparation of emissions inventory plans by diesel magnet sources, including, but not limited to, methods for quantifying air releases of diesel particulate exhaust that occur within the boundaries of the facility, and for characterizing for the public potential impacts of releases that occur outside of the boundaries of the facility but in the same general location and associated with mobile source trips to and from the facility. Air releases of diesel particulate exhaust from diesel magnet sources shall include emissions from motor vehicles, and may address mechanisms to integrate data prepared by the state board pursuant to subdivision (b) of Section 44345.

(b) The state board shall design the guidelines and criteria to ensure that, in collecting data to be used for emissions inventories, actual measurement is utilized whenever necessary to verify the accuracy of emission estimates, to the extent technologically feasible.

~~SEC. 8.~~

SEC. 7. Section 44360 of the Health and Safety Code is amended to read:

44360. (a) (1) Within 90 days of completion of the review of all emissions inventory data for facilities specified in subdivision

(a) of Section 44322, but not later than December 1, 1990, the district shall, based on examination of the emissions inventory data and in consultation with the state board and the State Department of Health Services, prioritize and then categorize those facilities for the purposes of health risk assessment. The district shall designate high, intermediate, and low priority categories, and shall include each facility within the appropriate category based on its individual priority. In establishing priorities pursuant to this section, the district shall consider the potency, toxicity, quantity, and volume of hazardous materials released from the facility, the proximity of the facility to potential receptors, including, but not limited to, hospitals, schools, day care centers, worksites, and residences, and any other factors that the district finds and determines may indicate that the facility may pose a significant risk to receptors. The district shall hold a public hearing prior to the final establishment of priorities and categories pursuant to this section.

(2) On or before January 1, 2007, the districts, collaboratively, and in consultation with the state board, shall review, and if appropriate, revise or augment guidelines and procedures for facility prioritization to address diesel magnet sources pursuant to this chapter.

(b) (1) Within 150 days of the designation of priorities and categories pursuant to subdivision (a), the operator of every facility that has been included within the highest priority category shall prepare and submit to the district a health risk assessment pursuant to Section 44361. The district may, at its discretion, grant a 30-day extension for submittal of the health risk assessment.

(2) Health risk assessments required by this chapter shall be prepared in accordance with guidelines established by the Office of Environmental Health Hazard Assessment. The office shall prepare draft guidelines, which shall be circulated to the public and the regulated community, and shall adopt risk assessment guidelines after consulting with the state board and the Risk Assessment Committee of the California Air Pollution Control Officers Association and after conducting at least two public workshops, one in the northern and one in the southern part of the state. The adoption of the guidelines is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of

Title 2 of the Government Code. The scientific review panel established pursuant to Section 39670 shall evaluate the guidelines adopted under this paragraph and shall recommend changes and additional criteria to reflect new scientific data or empirical studies.

(3) The guidelines established pursuant to paragraph (2) shall impose only those requirements on facilities subject to this subdivision that are necessary to ensure that a required health risk assessment is accurate and complete, and shall specify the type of site-specific factors that districts may take into account in determining when a single health risk assessment may be allowed under subdivision (d). The guidelines shall, in addition, allow the operator of a facility, at the operator's option, and to the extent that valid and reliable data are available, to include for consideration by the district in the health risk assessment any or all of the following supplemental information:

(A) Information concerning the scientific basis for selecting risk parameter values that are different than those required by the guidelines and the likelihood distributions that result when alternative values are used.

(B) Data from dispersion models, microenvironment characteristics, and population distributions that may be used to estimate maximum actual exposure.

(C) Risk expressions that show the likelihood that any given risk estimate is the correct risk value.

(D) A description of the incremental reductions in risk that occur when exposure is reduced.

(4) To ensure consistency in the use of the supplemental information authorized by subparagraphs (A), (B), (C), and (D) of paragraph (3), the guidelines established pursuant to paragraph (2) shall include guidance for use by the districts in considering the supplemental information when it is included in the health risk assessment.

(c) Upon submission of emissions inventory data for facilities specified in subdivisions (b) and (c) of Section 44322, the district shall designate facilities for inclusion within the highest priority category, as appropriate, and any facility so designated shall be subject to subdivision (b). In addition, the district may require the operator of any facility to prepare and submit health risk

assessments, in accordance with the priorities developed pursuant to subdivision (a).

(d) The district shall, except where site-specific factors may affect the results, allow the use of a single health risk assessment for two or more substantially identical facilities operated by the same person.

(e) Nothing contained in this section, Section 44380.5, or Chapter 6 (commencing with Section 44390) shall be interpreted as requiring a facility operator to prepare a new or revised health risk assessment using the guidelines established pursuant to paragraph (2) of subdivision (a) of this section if the facility operator is required by the district to begin the preparation of a health risk assessment before those guidelines are established.

~~SEC. 9.~~

SEC. 8. Section 44390 of the Health and Safety Code is amended to read:

44390. For purposes of this chapter, the following definitions apply:

(a) "Airborne toxic risk reduction measure" or "ATRRM" means those in-plant changes in production processes or feedstocks that reduce or eliminate toxic air emissions subject to this part. ATRRM's may include:

(1) Feedstock modification.

(2) Product reformulations.

(3) Production system modifications.

(4) System enclosure, emissions control, capture, or conversion.

(5) Operational standards and practices modification.

(b) Airborne toxic risk reduction measures do not include measures that will increase risk from exposure to the chemical in another media or that increase the risk to workers or consumers.

(c) "Airborne toxic risk reduction audit and plan" or "audit and plan" means the audit and plan specified in Section 44392.

(d) "Diesel magnet source risk reduction measure" or "DMSRRM" means those changes to equipment or method of operation that reduce or eliminate toxic air releases subject to this part. DMSRRMs shall be considered a form of airborne toxic risk reduction measure for the purposes of this chapter, and may include, but are not limited to, all of the following:

(1) Modification of operational standards or practices.

(2) Application of emissions control technology.

(3) System enclosure and emissions control, capture, or conversion.

(4) Use of alternative fuels or fuel additives.

(5) Engine replacement, retrofit, or repowering.

(6) Electrification of diesel-fueled internal combustion engines.

~~SEC. 10.~~

SEC. 9. Section 44391 of the Health and Safety Code is amended to read:

44391. (a) Whenever a health risk assessment approved pursuant to Chapter 4 (commencing with Section 44360) indicates, in the judgment of the district, that there is a significant risk associated with the emissions from a facility, the facility operator shall conduct an airborne toxic risk reduction audit and develop a plan to implement airborne toxic risk reduction measures that will result in the reduction of emissions from the facility to a level below the significant risk level within five years of the date the plan is submitted to the district. The facility operator shall implement measures set forth in the plan in accordance with this chapter.

(b) The period to implement the plan required by subdivision (a) may be shortened by the district if it finds that it is technically feasible and economically practicable to implement the plan to reduce emissions below the significant risk level more quickly or if it finds that the emissions from the facility pose an unreasonable health risk.

(c) (1) A district may lengthen the period to implement the plan required by subdivision (a) by up to an additional five years if it finds that a period longer than five years will not result in an unreasonable risk to public health and that requiring implementation of the plan within five years places an unreasonable economic burden on the facility operator or is not technically feasible.

(2) A district may lengthen the period for a diesel magnet source to implement the plan required by subdivision (a) in increments of five years, consistent with the quadrennial review pursuant to subdivision (h) of Section 44392, if all of the following conditions are met:

(A) The facility prepares and implements a plan, subject to district approval in a public hearing, to make real and measurable progress reducing risks using all technically and economically feasible DMSRRMs, including those measures already implemented by a similar diesel magnet source.

(B) The facility convenes an advisory group, subject to district approval, that includes at least two members of the affected residential community, two members of the affected business community, and one representative each from the district, the state board, and the city or county within which the facility is located.

(C) The facility reviews its risk reduction implementation progress with the advisory group, in a public meeting, at least once each year until the risk has been reduced to below the significance thresholds.

(d) (1) The state board and districts shall provide assistance to smaller businesses that have inadequate technical and financial resources for obtaining information, assessing risk reduction methods, and developing and applying risk reduction techniques.

(2) Risk reduction audits and plans for any industry subject to this chapter which is comprised mainly of small businesses using substantially similar technology may be completed by a self-conducted audit and checklist developed by the state board. The state board, in coordination with the districts, shall provide a copy of the audit and checklist to small businesses within those industries to assist them to meet the requirements of this chapter.

(e) The audit and plan shall contain all the information required by Section 44392.

(f) The plan shall be submitted to the district, within six months of a district's determination of significant risk, for review of completeness. Operators of facilities that have been notified prior to January 1, 1993, that there is a significant risk associated with emissions from the facility shall submit the plan by July 1, 1993. The district's review of completeness shall include a substantive analysis of the ~~emission~~ *emissions* reduction measures included in the plan, and the ability of those measures to achieve ~~emission~~ *emissions* reduction goals as quickly as feasible as provided in subdivisions (a) and (b).

(g) The district shall find the audit and plan to be satisfactory within three months if it meets the requirements of this chapter,

including, but not limited to, subdivision (f). If the district determines that the audit and plan does not meet those requirements, the district shall remand the audit and plan to the facility specifying the deficiencies identified by the district. A facility operator shall submit a revised audit and plan addressing the deficiencies identified by the district within 90 days of receipt of a deficiency notice.

(h) Progress on the emissions reductions achieved by the plan shall be reported to the district in emissions inventory updates. Emissions inventory updates shall be prepared as required by the audit and plan found to be satisfactory by the district pursuant to subdivision (g).

(i) If new information becomes available after the initial risk reduction audit and plan, on air toxics risks posed by a facility, or ~~emission~~ *emissions* reduction technologies that may be used by a facility that would significantly impact risks to exposed persons, the district may require the plan to be updated and resubmitted to the district.

(j) This section does not authorize the emission of a toxic air contaminant in violation of an airborne toxic control measure adopted pursuant to Chapter 3.5 (commencing with Section 39650) or in violation of Section 41700.

~~SEC. 11.~~

SEC. 10. Section 44395 is added to the Health and Safety Code, to read:

44395. Nothing in this chapter requires the operator of a diesel magnet source to implement any DMSRRM that is preempted by federal law.

~~SEC. 12.~~

SEC. 11. Section 44396 is added to the Health and Safety Code, to read:

44396. Notwithstanding the amendments to this part enacted by Assembly Bill 1101 of the 2005–06 Regular Session of the Legislature, all provisions of this part remain in full force and effect, and nothing in this part limits the authority of a district under any other provision of this code.

~~SEC. 13.~~

SEC. 12. All costs incurred by the State Air Resources Board, the Office of Environmental Health Hazard Assessment, and air districts, in complying with this act shall be recovered through

fees collected pursuant to Section 44380 of the Health and Safety Code.

~~SEC. 14.~~

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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